

Railroad Retirement Board

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payment is issued and not returned) for the second month after the first month in which earnings are over \$400. Along with the report, the employee must return the annuity payment for any month in which he or she earns over \$400.

§ 220.163 Employee penalty deductions.

If the employee earns over \$400 in a month and does not report it within the time limit shown in § 220.162(b), a penalty is imposed. The penalty deduction for the first failure to report equals the annuity amount for the first month in which the employee earned over \$400. The deduction for a second or later failure to report equals the annuity amount for each month in which the employee earned over \$400 and failed to report it on time.

§ 220.164 Employee end-of-year adjustment.

(a) *General.* After the end of a year, the employee whose annuity was withheld for earnings over \$400 in a month receives a form on which to report his or her earnings for the year.

(b) *Earnings are less than \$5000.* If the employee's yearly earnings are less than \$5000, all annuity payments and penalties withheld during the year because of earnings over \$4800 are paid.

(c) *Earnings are \$5000 or more.* (1) If the employee's yearly earnings are \$5000 or more, the annuity payments are adjusted so that the employee does not have more than one regular deduction for every \$400 of earnings over \$4800. The last \$200 or more of earnings over \$4800 is treated as if it were \$400. If the annuity rate changes during the year, any annuities due at the end of the year are paid first for months in which the annuity rate is higher. Penalty deductions may also apply as described in paragraph (c)(2) of this section.

(2) If the employee's yearly earnings are \$5000 or more and the employee failed to report monthly earnings over \$400 within the time limit described in § 220.162(b), penalty deductions will also apply. If it is the employee's first failure to report, the penalty deduction is equal to one month's annuity. If it is the employee's second or later failure

to report, the penalty deduction equals the annuity amount for each month in which the employee earned over \$400 and failed to report it on time.

(d) This section is illustrated by the following examples:

Example 1: Employee is awarded a disability annuity based upon his inability to engage in his regular railroad occupation effective January 1, 1989. During that year, he works April through October, for which he receives \$785 per month. He does not report these earnings to the Board until January of the following year. The employee is considered to have earned \$5600 ($7 \times \$785 = \5495 , which is rounded up to the nearest \$400). He forfeits three months of annuities:

$$\left(\frac{\$5600 - \$4800}{\$400} \right) = \begin{matrix} 2 \text{ plus 1 month annuity} \\ \text{penalty for failure} \\ \text{to report} \end{matrix}$$

Example 2: The same employee in the following year also works April through October, for which he receives \$785 per month. This time he reports the earnings on October 31. This year he forfeits 6 months of annuity payments, 2 due to earnings, computed as above, and 4 more due to penalty deductions for failure to report earnings over \$400 for the months April through July. There are no penalty deductions with respect to the months August, September, and October, since the employee reported these earnings prior to accepting an annuity for the second month after the month of earnings in excess of \$400.

Subpart N—Trial Work Period and Reentitlement Period for Annuitants Disabled for Any Regular Employment

§ 220.170 The trial work period.

(a) *Definition of the trial work period.* The trial work period is a period during which the annuitant may test his or her ability to work and still be considered disabled. The trial work period begins and ends as described in paragraph (e) of this section. During this period, the annuitant may perform "services" (see paragraph (b) of this section) in as many as 9 months, but these months do not have to be consecutive. The Board will not consider those services as showing that the annuitant's disability has ended until the annuitant has performed services in at least 9 months. However, after the trial work period has ended, the Board will consider the

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work the annuitant did during the trial work period in determining whether the annuitant's disability has ended at any time after the trial work period.

(b) *What the Board means by services.* When used in this section, services means any activity (whether legal or illegal), even though it is not substantial gainful activity, which is done in employment or self-employment for pay or profit, or is the kind normally done for pay or profit. We generally do not consider work done without remuneration to be services if it is done merely as therapy or training, or if it is work usually done in a daily routine around the house, or in self-care.

(1) *If the claimant is an employee.* The Board will consider the claimant's work as an employee to be services if:

(i) Before January 1, 2002, the claimant's earnings in a month were more than the amount(s) indicated in Table 1 of this section for the year(s) in which the claimant worked.

(ii) *Beginning January 1, 2002,* the claimant's earnings in a month are more than an amount determined for each calendar year to be the larger of:

(A) Such amount for the previous year, or

(B) The amount established by the Social Security Administration for such year as constituting the amount of monthly earnings used to determine whether a person has performed services for counting trial work period months.

(2) *If the claimant is self-employed.* The Board will consider the claimant's activities as a self-employed person to be services if:

(i) *Before January 1, 2002,* the claimant's net earnings in a month were more than the amount(s) indicated in Table 2 of this section for the year(s) in which the claimant worked, or the hours the claimant worked in the business in a month are more than the number of hours per month indicated in Table 2 for the years in which the claimant worked.

(ii) *Beginning January 1, 2002,* the claimant worked more than 80 hours a month in the business, or the claimant's net earnings in a month are more than an amount determined for each calendar year to be the larger of:

(A) Such amount for the previous year, or

(B) The amount established by the Social Security Administration for such year as constituting the amount of monthly earnings used to determine whether a person has performed services for counting trial work period months.

TABLE 1—FOR NON SELF-EMPLOYED

For months	You earn more than
In calendar years before 1979	\$50
In calendar years 1979–1989	75
In calendar years 1990–2000	200
In calendar year 2001	530

TABLE 2—FOR THE SELF-EMPLOYED

For months	Your net earnings are more than	Or you work in the business more than (hours)
In calendar years before 1979	\$50	15
In calendar years 1979–1989	75	15
In calendar years 1990–2000	200	40
In calendar year 2001	530	80

(c) *Limitations on the number of trial work periods.* The annuitant may have only one trial work period during each period in which he or she is disabled for any regular employment as defined in § 220.26.

(d) *Who is and is not entitled to a trial work period.* (1) Generally, the annuitant is entitled to a trial work period if he or she is entitled to an annuity based on disability.

(2) An annuitant is not entitled to a trial work period if he or she is in a second period of disability for which he or she did not have to complete a waiting period before qualifying for a disability annuity.

(e) *Payment of the disability annuity during the trial work period.* (1) The disability annuity of an employee, child, or widow(er) who is disabled for any regular employment will not be paid for any month in the trial work period in which the annuitant works for an employer covered by the Railroad Retirement Act (see § 220.160).

(2) The disability annuity of an employee who is disabled for any regular employment will not be paid for any month in this period in which the employee annuitant earns more than \$400

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in employment or self-employment (see § 220.161 and § 220.164).

(3) If the disability annuity for an employee, child, or widow(er) who is disabled for any regular employment is stopped because of work during the trial work period, and the disability annuitant discontinues that work before the end of the trial work period, the disability annuity may be started again without a new application and a new determination of disability.

(f) *When the trial work period begins and ends.* (1) The trial work period begins with whichever of the following calendar months is the later—

- (i) The annuity beginning date;
- (ii) The month after the end of the appropriate waiting period; or
- (iii) The month the application for disability is filed.

(2) The trial work period ends with the close of whichever of the following calendar months is the earlier—

- (i) The 9th month (whether or not the months have been consecutive) in which the annuitant performed services; or
- (ii) The month in which new evidence, other than evidence relating to any work the annuitant did during the trial work period, shows that the annuitant is not disabled, even though he or she has not worked a full 9 months. The Board may find that the annuitant's disability has ended at any time during the trial work period if the medical or other evidence shows that the annuitant is no longer disabled.

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§ 220.171 The reentitlement period.

(a) *General.* (1) The reentitlement period is an additional period after the 9 months of trial work during which the annuitant may continue to test his or her ability to work if he or she has a disabling impairment(s).

(2) The disability annuity of an employee, child, or widow(er) who is disabled for any regular employment will not be paid for—

- (i) Any month, after the 3rd month, in this period in which the annuitant does substantial gainful activity; or
- (ii) Any month in this period in which the annuitant works for an em-

ployer covered by the Railroad Retirement Act (see § 220.160).

(3) The disability annuity of an employee who is disabled for any regular employment will not be paid for any month in this period in which the employee annuitant earns more than \$400 in employment or self-employment (see § 220.161 and § 220.164).

(4) If the disability annuity of an employee, child or widow(er) who is disabled for any regular employment is stopped because of work during the trial work period or reentitlement period, and the disability annuitant discontinues that work before the end of either period, the disability annuity may be started again without a new application or a new determination of disability.

(b) *When the reentitlement period begins and ends.* The reentitlement period begins with the first month following completion of nine months of trial work but cannot begin earlier than December 1, 1980. It ends with whichever is earlier—

- (1) The month before the first month in which the annuitant's impairment(s) no longer exists or is not medically disabling; or
- (2) The last day of the 36th month following the end of the annuitant's trial work period.

(c) *When the annuitant is not entitled to a reentitlement period.* The annuitant is not entitled to a reentitlement period if—

- (1) He or she is not entitled to a trial work period; or
- (2) His or her disability ended before the annuitant completed nine months of trial work in that period in which he or she was disabled.

Subpart O—Continuing or Stopping Disability Due to Substantial Gainful Activity or Medical Improvement

§ 220.175 Responsibility to notify the Board of events which affect disability.

If the annuitant is entitled to a disability annuity because he or she is disabled for any regular employment, the annuitant should promptly tell the Board if—